AF/2800

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No. MLE-10502/29

In Re Application Of: **Levine**

Serial No.	Filing Date	Examiner	Group Art Unit
09/900,787	July 6, 2001	L. Liang	2853

Invention: **CHART RECORDER PROGRAMMING INTERFACE**

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on: **January 22, 2003**

Applicant is a small entity under 37 CFR 1.9 and 1.27.

A verified statement of small entity status under 37 CFR 1.27:

- ☐ is enclosed.
- ☐ has already been filed in this application.

The fee for filing this Appeal Brief is: **$160.00**

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- ☒ The Commissioner has already been authorized to charge fees in this application to a Deposit Account. A duplicate copy of this sheet is enclosed.
- ☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. **07-1180**
  A duplicate copy of this sheet is enclosed.

Signature

Dated: **March 24, 2003**

John G. Posa
Reg. No. 37,424
Gifford, Krass, Groh et al
280 N. Old Woodward Ave., Suite 400
Birmingham, MI 48009
Tel. 734/913-9300
Fax 734/913-6007

cc:

I certify that this document and fee is being deposited on 3/24/03 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Sheryl L. Hammer

Signature of Person Mailing Correspondence

Sheryl L. Hammer

Typed or Printed Name of Person Mailing Correspondence

#10/Appeal Brief
4/6/03
Hayes

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF APPEALS AND INTERFERENCES

In re application of: Levine

Serial No.: 09/900,787 Group No.: 2853

Filed: July 6, 2001 Examiner: Leonard Liang

For: CHART RECORDER PROGRAMMING INTERFACE

APPEAL BRIEF

Box AF
Assistant Commissioner for Patents
Washington, DC 20231

Dear Sir:

I. Real Party in Interest.

The real party in interest is inventor Inventures, LLC, a Michigan limited liability corporation, by virtue of assignment.

II. Related Appeals and Interferences.

There are no related appeals or interferences.

III. Status of Claims.

Claims 1-16 are pending in this application, with claims 1-8, 10-14 and 16 being under appeal. Claims 9 and 15 have been deemed allowable by the Examiner.

IV. Status of the Amendments.

An after-final amendment has been filed subsequent to the final rejection made in the Office Action Summary dated October 22, 2002, correcting a typographical error in the specification.

V. Summary of the Invention.

This invention improves upon the prior art by providing a chart recorder which uses the chart itself for programming purposes, thereby obviating the need for additional keypads and/or

GIFFORD, KRASS, GROH, SPRINKLE, ANDERSON & CITKOWSKI, P.C. 280 N. OLD WOODWARD AVENUE, STE. 400, BIRMINGHAM, MICHIGAN 48009-5394 (248) 647-6000

displays. Although the invention is described in terms of a circular chart recorder, the concept is not limited in this regard, and may apply to strip-chart recorders, plotters, printers, and other pieces of equipment wherein the position of a marker and/or paper or other substrate is known or determinable (Specification, page 2, lines 12-17).

Broadly, using a circular chart recorder as an example, a chart is provided having indicia printed in predetermined locations on the chart, such indicia having to do with the programming of the recorder (Specification, page 2, lines 18-20). By placing this chart onto the recorder, and by moving the pen to select among the available options, the unit is automatically programmed in accordance with the selections, without the need for controls other than those used for pen and/or chart movement (Specification, page 2, line 20 to page 3, line 2). Another advantage of the invention is that the chart is produced in confirmation of the settings, thereby leaving a user or operator with a printed record of the way in which the chart was programmed. A programming log may also be stored, preferably in a non-volatile memory such as an EE-PROM, and printed out for verification or archival purposes (Specification, page 3, lines 2-6).

In the preferred embodiment, a chart is provided having a comprehensive list of certain options imprinted thereon, whereby the user moves the pen so as to strike out those options which the user does not choose, thereby leaving the options which are undesirable (Specification, page 3, lines 7-10). Alternatively, however, the pen may be used to select desired options, as to underlining, for example, without affecting undesired options (Specification, page 3, lines 10-11).

Although a chart which moves into two directions is desirable, such a feature is not necessary to the invention, since unidirectional chart movement in conjunction with pen movement may be used to access any appropriate portion of the chart for programming purposes. Although a specialized chart is preferably provided for programming, each chart actually used may also have programming indicia imprinted thereon, preferably using a lighter shade that does not interfere with scale markings. An overlay or encoded matrix may also be used (Specification, page 3, lines 12-18). In any case, since the position of the chart is known due to the spatial alignment with the start position, and the position of the marker is always known, selection of the programming features is unambiguous according to the invention (Specification, page 3, lines 18-21).

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VI. Issues.

As set forth in the Office Action Summary having a mailing date of October 22, 2002, there are two issues in this appeal, namely:

1. Are claims 1-8 and 11-14 anticipated by Levine (U.S. Patent No. 5,978,000) under 35 U.S.C. §102(b)?

2. Are claims 10 and 16 unpatentable over Levine ('000) in view of Ishiguro (U.S. Patent No. 4,836,742), and further in view of Watanabe (U.S. Patent No. 4,025,838) under 35 U.S.C. §103(a)?

VII. Grouping of Claims.

Appellants believe the following groups of claims represent patentably distinct subject matter warranting independent consideration by the Board:

Group I: Claims 1-8 and 10, wherein claims 2-8 and 10 stand or fall with claim 1; and

Group II: Claims 11-14 and 16, wherein claims 12-14 and 16 stand or fall with claim 11.

VIII. Argument.

Group I: Claims 1-8 and 10, Wherein Claims 2-8 and 10 Stand or Fall with Claim 1.

Claim 1 stands rejected under 35 U.S.C. §102(b) over Levine (U.S. Patent No. 5,978,000 -- the same inventor). Claim 1, a method claim, includes the steps of "providing a surface including options *relating to the programming of the instrument.*" With respect to this limitation, the Examiner refers to Figure 1, reference numerals 102, 106 and 110, which are simply the chart itself with intersecting lines printed thereon. These have nothing to do with the programming of the instrument, but rather, something at the instrument, once programmed, overwrites. Anticipation is precluded for this reason alone.

Claim 1 additionally includes the limitation of "storing information relating to the location of surface positions accessible by the marking implement." To address this limitation, the Examiner points to Figure 2, and the specification at column 3, lines 41-65. However, Figure 2 is a block diagram, and column 3, lines 41-65 discusses the hardware. Pointing to particular structural elements, even if they could perform a particular function, falls short of anticipating a method step. It is well settled that, in order to anticipate, the reference must show each and every element of an

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invention as claimed. RCA Corp. v. Applied Digital Data Systems, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In this case, a "microprocessor" or other electronic circuit by itself does not "disclose" any method step(s) in particular.

Claim 1 further includes a limitation of "moving at least a marking implement relative to the visual options for selection purposes." Again, the Examiner points to certain hardware which, presumably, the Examiner assumes *could* perform the stated function, also citing column 2, lines 60-67 which discuss the way in which, according to the '000 patent, an operator may move a pen to write set points onto the chart paper. Thus, a marking implement is not moved relative to visible options for selection purposes, since the visual options are not yet there.

Finally, claim 1 includes the limitation of "programming the instrument by correlating the position of the implement during the movement thereof to determine the options selected." Here, the Examiner points to column1, lines 55-67 which discusses only the fact that set points may be programmed into a chart recorder and made visible on the chart recorder paper. Again, this has nothing to do with selecting existing options, but rather, involves a technique whereby predetermined set points are made visible. For all of the reasons set forth above, claim 1 of the instant invention clearly distinguishes over the '000 patent.

Group II: Claims 11-14 and 16, Wherein Claims 12-14 and 16 Stand or Fall with Claim 11.

Claim 11 is similar in scope to claim 1, but includes the limitation of "moving at least the pen relative to the printed parameters so as to select certain of the parameters by marking the chart with the pen." There are no "printed parameters" disclosed in the '000 patent which would be applicable to this claim. Anticipation is precluded for this reason alone.

Conclusion.

From the foregoing, Appellant submits that the rejected claims are allowable over the prior art. Accordingly, the claims define patentable subject matter and are in condition for allowance.

Respectfully submitted,

John G. Posa
Registration No. 37,424
Gifford, Krass, Groh, Sprinkle,
Anderson & Citkowski, P.C.
280 N. Old Woodward, Suite 400
Birmingham, MI 48009
(734) 913-9300

GIFFORD, KRASS, GROH, SPRINKLE, ANDERSON & CITKOWSKI, P.C. 280 N. OLD WOODWARD AVENUE, STE. 400, BIRMINGHAM, MICHIGAN 48009-5394 (248) 647-6000

APPENDIX A

CLAIMS ON APPEAL

1. A method of programming an instrument of the type wherein a marking implement is used to mark a surface, comprising the steps of:

providing a surface including visible options relating to the programming of the instrument;

storing information relating to the location of surface positions accessible by the marking implement;

moving at least the marking implement relative to the visible options for selection purposes; and

programming the instrument by correlating the position of the implement during the movement thereof to determine the options selected.

2. The method of claim 1, wherein the step of moving at least the implement includes moving the implement in two dimensions.

3. The method of claim 2, further including the step of moving the surface relative to the implement during the selection process.

4. The method of claim 1, wherein the instrument is a chart recorder and the surface is on a chart.

5. The method of claim 4, wherein the chart is a circular chart.

6. The method of claim 1, wherein the options relate to one or more of the following:

date or time,

operation of an external controller,

a mathematical function,

an event message,

the function of a communications channel, or

the calibration of the instrument.

7. The method of claim 1, further including the step of indexing the surface relative to a start position in conjunction with the step of storing information relating to the location of surface positions accessible by the marking implement.

8. The method of claim 1, wherein the options are selected by marking the surface with the implement.

10. The method of claim 1, further including the step of marking a new surface in response to a user command subsequent to the programming of the instrument to obtain a record of currently selected options.

11. A method of programming a chart recorder having a pen to mark a chart, comprising the steps of:

providing a chart including printed parameters relating to the programming of the recorder;

placing the chart in a start position, enabling the recorder to advance to known positions on the chart using movements of the pen, chart, or both;

moving at least the pen relative to the printed parameters so as to select certain of the parameters by marking the chart with the pen; and

programming the recorder by correlating the position of the pen relative to the chart during the selection of the parameters..

12. The method of claim 11, wherein the known locations on the chart are in two dimensions.

13. The method of claim 11, wherein the chart is a circular chart.

14. The method of claim 11, wherein the printed parameters relate to one or more of the following:

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date or time,

operation of an external controller,

a mathematical function,

an event message,

the function of a communications channel, or

the calibration of the instrument.

16. The method of claim 9, further including the step of marking a new chart in response to a user command subsequent to the programming of the instrument to obtain a record of currently selected options.